

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

TRACY M. OLIVER,	§	
	§	
Petitioner,	§	
	§	
	§	CIVIL ACTION H-05-2575
	§	
FEDERAL BUREAU OF PRISONS,	§	
	§	
Respondent.	§	

**MEMORANDUM ON DISMISSAL**

The Petitioner has not responded to the Respondent's Motion to Dismiss. The Court's order to answer (Docket Entry No. 4) required the Petitioner to respond to any dispositive motion filed by respondent, including a motion to dismiss, within thirty (30) days. The Court's order specifically provided that "(f)ailure to file a response within thirty days mayl result in the dismissal of this action for want of prosecution." The Petitioner's failure to pursue this action forces this court to conclude that he lacks due diligence.

Therefore, under the inherent powers necessarily vested in a court to manage its own affairs, this court determines that dismissal for want of prosecution is appropriate. *See* Fed.R.Civ.P. 41(b); *Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (the Fifth Circuit affirmed a dismissal in the Houston Division of the Southern District of Texas for want of prosecution based on a habeas petitioner's failure to respond to a summary

judgment motion where petitioner had been ordered to respond to any dispositive motion and warned that failure to file a response would result in dismissal). Dismissal is also appropriate for failure to comply with a court order. The Petitioner is advised, however, that upon a proper showing, relief from this order may be granted in accordance with FED.R.CIV.P. 60(b).

Accordingly, it is ORDERED that this action be DISMISSED without prejudice for want of prosecution and for failure to comply with a court order. All pending motions are DENIED as moot.

SIGNED at Houston, Texas, on this 31<sup>st</sup> day of October, 2005.



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DAVID HITTNER

United States District Judge